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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 RICHARD BREES,

9 Plaintiff,

10 v.

11 HMS GLOBAL MARITIME INC., HMS  
12 FERRIES INC., and STEVE CAPUTO,

13 Defendants.

CASE NO. 3:18-cv-05691-RJB

ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S  
MOTION TO APPOINT COUNSEL

14 THIS MATTER comes before the Court on Plaintiff's Motion to Appoint Counsel. Dkt.

15 7. The Court has considered the motion, the Complaint (Dkt. 1-1), and the remainder of the file  
16 herein.

17 This 28 U.S.C. § 1983 action flows from the allegation that Plaintiff was subjected to an  
18 unlawful search at the ferry terminal in Steilacoom, Washington during May of 2018. Dkt. 1-1.  
19 Plaintiff filed this action on August 22, 2018, and has been granted leave to proceed *in forma*  
20 *pauperis*. Dkt. 3. Plaintiff filed a motion to appoint counsel on September 14, 2018. Dkt. 7.

21 Facts alleged in the Complaint are summarized as follows. *See* Dkt. 1-1 at 4-7. While  
22 Plaintiff waited for the ferry, Defendant Steve Caputo, "General Manager" and "a Senior  
23 Ticketing Agent," demanded the search of Plaintiff's vehicle for purposes of a search training  
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1 exercise. Plaintiff refused the search, and it appeared Plaintiff would be refused entry onto the  
2 ferry, although he was later allowed to proceed. The next day, Plaintiff was subjected to a second  
3 search request, which Plaintiff initially refused, until Defendant Caputo threatened to prohibit  
4 Plaintiff from taking the ferry. After Defendant Caputo searched the interior of Plaintiff's car, he  
5 requested to also search bags in Plaintiff's trunk, and Plaintiff reluctantly acquiesced. Plaintiff  
6 said to Defendant Caputo, "see you in court asshole," after which Defendant Caputo informed  
7 other personnel that Plaintiff was banned from the ferry. Other personnel directed Plaintiff to  
8 parking, away from the ferry loading ramp. *Id.*

9 The Complaint brings a state law tort of intentional infliction of distress and alleges  
10 violations of the First Amendment and Fourth Amendment and Article 1, § 7 of the Washington  
11 State Constitution. Dkt. 1-1 at 8.

12 No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v.*  
13 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see also United States v. \$292,888.04 in U.S.*  
14 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) ("[a]ppointment of counsel under this section is  
15 discretionary, not mandatory."). Under § 1915(e)(1), in "exceptional circumstances," a district  
16 court may appoint counsel for indigent civil litigants. *Rand v. Roland*, 113 F.3d 1520, 1525 (9th  
17 Cir. 1997), *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998). To decide whether  
18 exceptional circumstances exist, the Court must evaluate both "the likelihood of success on the  
19 merits [and] the ability of the petitioner to articulate his claims *pro se* in light of the complexity  
20 of the legal issues involved." *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)  
21 (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that  
22 show he has an insufficient grasp of the case or the legal issue involved, and an inadequate  
23 ability to articulate the factual basis of the claim. *Agyeman v. Corrections Corp. of America*, 390  
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1 F.3d 1101, 1103 (9th Cir. 2004). That a *pro se* litigant may be better served with the assistance of  
2 counsel is not the test. *Rand*, 113 F.3d at 1525.

3 Applied here, first, while the Court should be cautious to avoid unnecessary findings  
4 about Plaintiff's claims, the Court finds that the facts as alleged point to the likelihood of success  
5 on the merits. And there are no glaring defects, such lack of subject matter jurisdiction or failure  
6 to file within statute of limitations, common to *pro se* cases. Second, the Complaint demonstrates  
7 that Plaintiff possesses the ability to articulate claims *pro se*. The facts are organized in a logical  
8 sequence, and there is a reasonable and rational connection between facts and claims alleged,  
9 indicating Plaintiff's intelligent grasp of the legal requirements to initiate a case. At present,  
10 Plaintiff shows the ability to pursue his claims, at least at the pleadings stage. As the case  
11 approaches trial, Plaintiff may refile the motion to appoint counsel. Plaintiff's motion should be  
12 denied without prejudice.

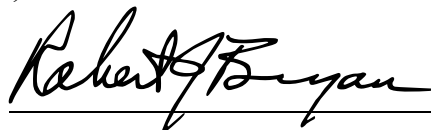
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14 THEREFORE, Plaintiff's Motion to Appoint Counsel (Dkt. 7) is DENIED WITHOUT  
15 PREJUDICE.

16 It is so ordered.

17 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
18 to any party appearing *pro se* at said party's last known address.

19 Dated this 11<sup>th</sup> day of October, 2018.

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21 ROBERT J. BRYAN  
22 United States District Judge  
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